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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,560	10/23/2001	Dietrich Gravenstein	UF-168C2D1	5627

23557 7590 03/20/2003

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EXAMINER

LEUBECKER, JOHN P

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,560

Applicant(s)

GRAVENSTEIN ET AL.

Examiner

John P. Leubecker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Specification

1. The abstract of the disclosure is objected to because it does not include a concise statement of the technical disclosure which is new in the art to which the invention pertains and because it should not refer to purported merits or speculative applications of the invention. In addition, the abstract should not begin with "The subject invention..." or "The disclose invention...".

Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities: the priority data in the first paragraph of the specification should be updated (i.e., patent numbers).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7-9 and 13-15 rejected under 35 U.S.C. 102(b) as being anticipated by Fritch et al. (U.S. Pat. 4,607,622).

Fritch et al. discloses an imaging stylet comprising a malleable stylet (either at col.7, lines 48-50 or col.8, lines 28-31), a flexible image guide (62), means for viewing an image

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(52,54), at least one flexible illumination fiber (64), and a removable sheath (60). The distal ends of the stylet, image guide and illumination fiber are all co-extensive (note Figure 6 and note that either channel 66 or the sheath itself, both of which can accommodate the stylet as pointed out above, are co-extensive with the optical fibers). As to claim 2, the sheath is adapted to isolate the distal end of the image guide (col.7, lines 63-64) and comprises a transparent end portion (70, Fig.6). As to claims 3-5, 7-9 and 13-15, the elements that meet the limitations of these claims have been described above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritch et al. in view of Suzuki et al. (U.S. Pat. 5,127,079).

Fritch et al. fail to explicitly mention the material used to make the image guide.

Assuming glass optical fibers in the Fritch et al. device, the skilled artisan in the optical fiber art would recognize the obvious alternative use of glass and plastic optical fibers. Suzuki et al. is just one reference that teaches use of plastic optical fibers for imaging in an endoscope. Suzuki et al. also teaches motivation to use plastic optical fibers instead of glass ones: glass optical fibers are costly, relatively rigid, easily broken and difficult to pass through curved or bent

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arteries (col.1, lines 23-35). Therefore, it would have been obvious to one of mere ordinary skill in the art to have provided a plastic image guide in the Fritch et al. device since, when reducing such device to practice, one would have to chose from materials known in the art at the time the invention was made and plastic optical fibers, in view of Suzuki et al., clearly have desirable advantages.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Reid, Jr. (U.S. Pat. 4,800,870)--note sheath accommodating fiber optic imaging and illumination bundles and a malleable stylet. This reference can meet the limitations of claims 1 and 3.

Heller et al. (U.S. 5,131,380)--note sheath accommodating an illumination fiber and a malleable stylet. Heller et al. also teaches use of plastic material for the fiber. This reference can meet the limitations of claims 13-15.

King (U.S. Pat. 5,733,241), Flam (U.S. Pat. 5,607,386) and Greene (U.S. Pat. 5,327,881)--note fiberoptic intubation stylet.

Levin (U.S. Pat. 5,676,635)--note sheath including imaging and illumination optical fibers bundle. Because of excess channels, Levin is also capable (e.g., adapted to) of accommodating a malleable stylet, although one is not disclosed.

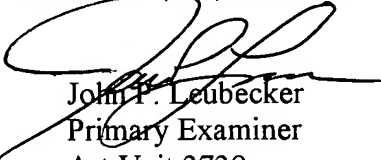
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (703) 308-0951.

The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



John P. Leubecker
Primary Examiner
Art Unit 3739

jpl
March 18, 2003